

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY BRAZIL**

ARTICLE 14 UNCAC

PREVENTION OF MONEY-LAUNDERING

BRAZIL (SIXTH MEETING)

Bearing in mind the international recommendations concerning measures to prevent money-laundering, the Federative Republic of Brazil has strengthened and intensified its internal system to deter and detect money-laundering and other illicit financial transactions.

In July 2012, one of the most important tools in the fight against money laundering in Brazil, the Law n. 9,613, of March 3, 1998, was amended by the Law n. 12,683, for the purpose of making it both more efficient and more effective. The new law defines crimes of money laundering and of concealment of assets, rights, and valuables as those that conceal or disguise the nature, origin, location, disposition, movement, or ownership of property, rights, or valuables originating, directly or indirectly, from a criminal violation. It is important to underscore the fact that the new law widened the extension of the list of predicate offences for money laundering.

Regulatory changes and innovations in anti-money laundering compliance are ongoing, especially regarding the procedures that must be adopted by companies included in the roll of entities subjected to the terms of the law. The Law 12,683/2012 adds new reporting obligations requiring individuals and companies that carry out specific business activities to report suspected transactions of money laundering. Banking, securities and insurance institutions are required to identify beneficial owners. Additionally, all financial institutions are subject to comprehensive requirements to identify politically exposed persons, PEPs, keep records and report suspicious transactions. As a consequence, Brazil has invested in creating data-processing laboratories in several investigative bodies, police and public prosecutors. In order to guarantee that banks and non-bank financial institutions ensure effective customer and beneficial owner identification, monitoring of transactions and accurate record-keeping, data-processing laboratories are available.

In 2007, the Department of Assets Recovery and International Legal Cooperation at Ministry of Justice created the Technology Laboratory Against Money Laundering (LAB-LD) to support complex investigations into corruption and money laundering. Following the success of the first initiative, the government began implementing similar units in other state and federal organs from 2009. As of 2015, there are nearly 50 laboratories across Brazil, which make up the Federal Laboratory Network Against Money Laundering (REDELAB). In these laboratories, a vast amount of data is analyzed to uncover and freeze illicit assets, using a methodology developed by specialists and replicated throughout all laboratory units. To date, REDE-LAB has identified the equivalent of USD8.9 billion in illicit assets, helping authorities to bring legal action against suspected perpetrators of crimes in Brazil.

Seen in these terms, Brazil also has registered some of the most rapid advances in bank data. Although bank secrecy is protected in Brazil, understood as a result of the constitutional right to privacy protection, courts have the power to determine the access to its data. According to Complementary Law n. 105, financial records must be made available to courts, and only to them, with breach of secrecy being authorized when necessary for the investigation of any illicit act at any stage, especially when it refers to crimes such as terrorism, against public administration, against the national financial system, money laundering, among others.

Under Brazil's new money laundering law, the Brazilian Financial Intelligence Unit, FIU, the Council for Financial Activities Control, COAF, instituted by the Law n. 9,613, remains legally responsible for the purpose of regulating, applying administrative sanctions, receiving pertinent information, examining and identifying any suspicious occurrence of illicit activities. In this connection, COAF has refined the way it exchanges information at national and international levels, mainly its international counterparts of the Egmont Group of Financial Intelligence Units in cases arising from international legal cooperation. Brazil is able to provide assistance for cooperation with respect to the investigation, prosecution and judicial proceedings related to the freezing, seizure, confiscation and return of the proceeds of offences in general, including those

established in accordance with the Convention. Also, bilateral agreements in order to provide assistance in criminal matters are in force with: Canada, China, Colombia, Cuba, France, Italy, Peru, Portugal, Spain, South Korea, Surinam, Switzerland, Ukraine, Mexico, Nigeria and the United States of America.

Brazil does not refuse mutual legal assistance, MLA, requests on the grounds that the offence is considered to involve fiscal matters. Although some of the multilateral treaties to which Brazil is a party do provide that a requested state may refuse assistance in such cases, Brazil does not exercise these options. For example, Brazil is a party to the Inter-American Convention on Mutual Legal Assistance in Criminal Matters (Decree 6340/2008). Article 9 of that Convention provides that a requested state may refuse to provide MLA when it determines that the request pertains to a tax crime, except where the offence is committed by way of an intentionally false statement or failure to declare income derived from any other offence covered by the Convention. However, Brazil is also a party to the Optional Protocol to this Convention which provides that countries shall not exercise their right to refuse to provide MLA solely on the ground that the request concerns a tax crime if the requesting country is also a party to this Protocol or if the act specified in the request corresponds to a similar tax crime under the laws of the requested state. Also, Brazil's bilateral MLA agreements with the following countries specifically do not provide for refusing a request on the basis that the offence involves fiscal or tax matters: Cuba, China, Colombia, France, Italy, Korea, Peru, Portugal, Ukraine and the United States.

Concerning national level, Brazil has organized a number of training programs for specialized human resources, including Board staff personnel and officials, in cooperation with other government agencies. All training programs involving COAF includes course content on money laundering and the related predicate offenses, among them the foreign bribery offense. Additionally, every year COAF offers a Financial Intelligence Training Course to professionals employed in financial institutions, oversight agencies and prosecution services. Launched by COAF in 2000, the program is supported by a variety of government academies and educational institutions. Individual courses addressed subjects ranging from money laundering, including the related predicate offenses, to financing of terrorism.

Another successful national initiative is the National Strategy against Corruption and Money Laundering, ENCCLA, which is a group integrated by public institutions and bodies as well as some corporative entities that discusses initiatives to combat corruption and money laundering. Within those initiatives there are bills, databases, case studies, experiences sharing. Each year the group meets to set out goals that should be accomplished during the next year.

Concerning prevention and detection of money laundering in cross-border transportation of cash, Brazil has ensured that its competent authorities have the legal authority to stop or restrain currency. Brazil has borders with ten different countries, totaling 16,885 kilometers. As a consequence, Brazil has repeatedly been in contact

with the government of neighboring countries in order to ascertain and to evaluate money laundering prevention and repression of the cross-border cash. In early 2015, Brazilian federal police dismantled an international criminal network involved in US\$30 billion money laundering which acted in exchange houses in Paraguay and in Brazil.

In the context of an overall international cooperation strategy concerning anti-money laundering, a range of international documents issued by regional and multilateral anti-money laundering initiatives were considered while establishing and developing domestic regulatory and supervisory regime. It should be mentioned that Brazil is a part of the Egmont Group of Financial Intelligence Units, active member of The Financial Action Task Force, FATF, and signatory to the United Nations International Convention for the Suppression of the Financing of Terrorism, the United Nations Convention Against Transnational Organized Crime, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and to its Protocols and in the regional context Brazil is also signatory to the Inter-American Convention against Corruption and member of the FATF of Latin America, GAFILAT.

Another initiative that is a step forward in strengthening the Brazilian legal system and will bring it more in line with international standards for curbing such crimes is the Law n. 12,846/2013. On February 2014, the Brazilian Congress enacted the Law n. 12,846/2013, which imposes strict liability on legal entities for acts against national and foreign public administrations. The new anti-corruption law includes specific language intended as an incentive for the implementation of compliance programs.

Since then, Brazil has made a clear commitment to further strengthen the national system for the prevention, detection and suppression of money laundering, focusing on comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions. Brazil has significantly enhanced its ability to prosecute money laundering offences by implementing a system of Specialized Federal Courts which bring together federal prosecutors and judges specialized and with experience in handling cases involving money laundering and other financial crimes. Numerous other laws have enhanced to provide law enforcement and regulatory agencies with the most effective tools to combat money laundering in Brazil, according to the requirements of Article 14 of the UNCAC.

Examples of the types of challenges States parties and signatories may have faced include:

- Financial and technical capacity challenges with regard to the ability of agencies involved in combating money-laundering to cooperate and exchange information at the national and international levels;
- Coordination challenges among relevant agencies responsible for combating money-laundering with regard to global, regional and bilateral cooperation;
- Challenges with regard to monitoring the compliance of banks and other reporting entities with the AML preventive measures.

In addition to the preventive measures required by UNCAC, especially the Article 14, Brazil intends to further strengthen its AML regime by the following measures:

- a) Brazil has already started the legislative process to criminalize terrorist financing as a stand-alone offence in a manner that is consistent with the international requirements;
- b) Brazil needs to continue to support the Specialized Federal Courts and other measures to enhance the ability to apply final sanctions for money laundering, what will bring its criminal offence of money laundering in line with FATF;
- c) Last but not least, Brazil must continue to focus on fortifying its data-processing laboratories in order to increase cooperation and exchange information at national and international levels.